EXHIBIT 1

982.1(20)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Damon Abnos, In Pro Per
P.O. Box 22704
Kansas City, MO 64113

TELEPHONE NO: 816-213-8000 FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Damon Abnos, In Pro Per

FOR COURT USE ONLY

FILED CIVIL BUSINESS OFFICE CENTRAL DIVISION
2006 APR 10 P 4:38
CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS: 330 W. Broadway, San Diego, CA 92101
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME: Hall of Justice

PLAINTIFF: Damon Abnos

DEFENDANT: Lee Hejmanowski, Seltzer, Caplan, McMahon, Vitek

☑ DOES 1 TO 10

CONTRACT

☑ COMPLAINT ☐ AMENDED COMPLAINT *(Number)*:

☐ CROSS-COMPLAINT ☐ AMENDED CROSS-COMPLAINT *(Number)*:

Jurisdiction *(check all that apply)*:
ACTION IS A LIMITED CIVIL CASE
Amount demanded ☐ does not exceed $10,000
☐ exceeds $10,000 but does not exceed $25,000
☑ ACTION IS AN UNLIMITED CIVIL CASE (exceeds $25,000)
☐ ACTION IS RECLASSIFIED by this amended complaint or cross-complaint
☐ from limited to unlimited
☐ from unlimited to limited

CASE NUMBER: GIC 864098

1. Plaintiff* *(name or names)*: Damon Abnos

alleges causes of action against defendant* *(name or names)*: Lee Hejmanowski, Seltzer, Caplan, McMahon, Vitek and Does 1-10, inclusive

2. This pleading, including attachments and exhibits, consists of the following number of pages:
3. a. Each plaintiff named above is a competent adult
   ☐ except plaintiff *(name)*:
   (1) ☐ a corporation qualified to do business in California
   (2) ☐ an unincorporated entity *(describe)*:
   (3) ☐ other *(specify)*:

   b. ☐ Plaintiff *(name)*:
   a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name *(specify)*:

   b. ☐ has complied with all licensing requirements as a licensed *(specify)*:
   c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.
4. a. Each defendant named above is a natural person
   ☐ except defendant *(name)*:
   (1) ☐ a business organization, form unknown
   (2) ☐ a corporation
   (3) ☐ an unincorporated entity *(describe)*:

   (4) ☐ a public entity *(describe)*:

   (5) ☐ other *(specify)*:

   ☐ except defendant *(name)*:
   (1) ☐ a business organization, form unknown
   (2) ☐ a corporation
   (3) ☐ an unincorporated entity *(describe)*:

   (4) ☐ a public entity *(describe)*:

   (5) ☐ other *(specify)*:

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Form Approved for Optional Use
Judicial Council of California
982.1(20) [Rev. January 1, 2006]

COMPLAINT—Contract

Code of Civil Procedure, § 425.12

SHORT TITLE: Abnos v. Hejmanowski, Seltzer, Caplan, McMahon and Vitek	CASE NUMBER:

982.1(20)

4. *(Continued)*
   b. The true names of defendants sued as Does are unknown to plaintiff.
      (1) ☐ Doe defendants *(specify Doe numbers)*: ______________ were the agents or employees of the named defendants and acted within the scope of that agency or employment.
      (2) ☐ Doe defendants *(specify Doe numbers)*: ______________ are persons whose capacities are unknown to plaintiff.
   c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.
   d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are *(names)*:

5. ☐ Plaintiff is required to comply with a claims statute, and
   a. ☐ has complied with applicable claims statutes, or
   b. ☐ is excused from complying because *(specify)*:

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.
7. This court is the proper court because
   a. ☑ a defendant entered into the contract here.
   b. ☐ a defendant lived here when the contract was entered into.
   c. ☐ a defendant lives here now.
   d. ☑ the contract was to be performed here.
   e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
   f. ☐ real property that is the subject of this action is located here.
   g. ☐ other *(specify)*:

8. The following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached)*:
   ☑ Breach of Contract
   ☐ Common Counts
   ☑ Other *(specify)*: Legal Malpractice

9. ☐ Other allegations:

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
   a. ☑ damages of: $ According to proof
   b. ☑ interest on the damages
      (1) ☑ according to proof
      (2) ☐ at the rate of *(specify)*: percent per year from *(date)*:
   c. ☐ attorney's fees
      (1) ☐ of: $
      (2) ☐ according to proof.
   d. ☑ other *(specify)*: For a judicial declaration of the reasonableness of underlying attorneys fees.

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows *(specify paragraph numbers)*:

Date: April 10, 2006

Damon Abnos
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

EXHIBIT 2

www.scmv.com
619.685.3003
619.685.3100 FAX

2100 SYMPHONY TOWERS
750 B STREET
SAN DIEGO, CALIFORNIA 92101

SELTZER | CAPLAN | McMAHON | VITEK
A LAW CORPORATION

CHRISTOPHER L. LUDMER, ESQ.
ludmer@scmv.com
619.685.3122
619.702.6895 FAX

NORMAN T. SELTZER
ROBERT CAPLAN
GERALD L. MCMAHON
REGINALD A. VITEK
DAVID J. DORNE
JAMES R. DAWE
BRIAN T. SELTZER
ELIZABETH A. SMITH-CHAVEZ
JOYCE A. MCCOY
DENNIS J. WICKHAM
JOHN H. ALSPAUGH
JAMES P. DELPHEY
ELINOR T. MERIDETH
MICHAEL G. NARDI
THOMAS F. STEINKE
NEAL P. PANISH
SEAN T. HARGADEN
DAVID J. ZUBKOFF
CHARLES L. GOLDBERG
PATRICK Q. HALL
MICHAEL A. LEONE
DANIEL A. ANDRIST
J. SCOTT SCHEPER
LEE E. HEJMANOWSKI
DANIEL E. EATON
MONTY A. McINTYRE
VICTOR A. VILAPLANA
GREGORY A. VEGA
HOWARD J. BARNHORST II
PAUL R. DATNOW
JACK R. LEER
AMANDA L. HARRIS
MARNIE S. SKEEN
DAVID M. GREELEY
CHARLES B. WITHAM
RHONDA K. CRANDALL
SCOTT A. MILLER
ROBERT (ROBIN) M. TRAYLOR
LINDA PAPST de LEON
JOSEPH P. MARTINEZ
RICHARD A. CLEGG
G. SCOTT WILLIAMS
ANDREW D. BROOKS
JEFFREY B. HARRIS
MATTHEW M. MAHONEY
CHRISTINE M. LA PINTA
DANIEL W. ABBOTT
ANGELA A. BASSETT
ALLISON C. SHANAHAN
ERIK L. SCHRANER
JASON P. SWEENEY
JASON M. SANTANA
CLARICE A. ESTRADA
CHRISTOPHER L. LUDMER
NICHOLAS S. BARNHORST
CHAD M. HARRIS
CYNTHIA MORGAN
MICHAEL B. LEES
JUSTINE M. PHILLIPS
HOPE N. CHAU
J. KEVIN MANN[1]
TRACY A. WARREN

OF COUNSEL
M. CHRISTINE TENNISON

[1]ADMITTED IN TEXAS ONLY

August 4, 2006

Damon Abnos
6301 Rockhill Road, Suite 102
Kansas City, Missouri 64132

Damon Abnos
P.O. Box 22704
Kansas City, Missouri 64113

Re: Abnos adv. Lee Hejmanowski and Seltzer Caplan McMahon Vitek
Our File No. 05000.60424

Dear Mr. Abnos:

This is a follow-up to our telephone conversation on July 20, 2006 where I informed you that under the terms of the engagement letter you signed, any dispute arising out of that engagement was subject to mandatory arbitration rather than a lawsuit. You indicated to me that the reason you filed your lawsuit in San Diego Superior Court, case number GIC 864098, was to prevent the expiration of the statute of limitations. I asked you whether you would agree to enter into a stipulation to send the dispute to arbitration and you agreed in theory. However, you asked me to wait two weeks until the dispute with your ex-wife was resolved.

On August 1, and August 2, 2006, I spoke on the telephone with Mr. Michael Smith, Esq. Mr. Smith informed me that you were consulting with him regarding your dispute with this firm, but that you have not yet formally engaged him to represent you. After Mr. Smith represented that he had your authorization to discuss the case with me, I informed him of the substance of this letter, and our desire to move the case into arbitration as quickly as possible unless we first reached a more amicable settlement.

On August 3, 2006, I received a Notice of Case Management Conference scheduled by the court for September 1, 2006 at 11:15 a.m. in Department 64 of the San Diego Superior Court located at 330 W. Broadway, San Diego, California 92101. Given that the court is moving forward with a case that belongs in arbitration, I am asking you again to agree to voluntarily dismiss your lawsuit and commence arbitration proceedings. Please contact me as soon as possible at (619) 685-3122 and let me know whether you will agree to stipulate to send this dispute to arbitration. If you are unwilling to do so, as I indicated on July 20, 2006, I will be forced to file a Motion to Compel Arbitration and will seek to recover the costs incurred.

Very truly yours,

Christopher L. Ludmer
SELTZER CAPLAN McMAHON VITEK
A Law Corporation

EXHIBIT 3

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Sadr & Barrera, APLC
Kasra Sadr (SBN 183765)
401 West A Street, Suite 1815
San Diego, CA 92101
TELEPHONE NO.: 619-233-8460 FAX NO. (Optional): 619-203-1009
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central Division

PLAINTIFF/PETITIONER: Damon Abnos
DEFENDANT/RESPONDENT: Lee Hejmanowski, et al

CASE MANAGEMENT STATEMENT

(Check one): [✓] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: GIC 864098

A CASE MANAGEMENT CONFERENCE is scheduled as follows:
Date: 9/1/06 Time: 11:15 Dept.: 64 Div.: Room:
Address of court (if different from the address above):

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
   a. [✓] This statement is submitted by party (name): Damon Abnos
   b. [ ] This statement is submitted jointly by parties (names):

2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
   a. The complaint was filed on (date): April 10, 2006
   b. [ ] The cross-complaint, if any, was filed on (date): July 20, 2006

3. Service (to be answered by plaintiffs and cross-complainants only)
   a. [✓] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served (specify names and explain why not):
      (2) [ ] have been served but have not appeared and have not been dismissed (specify names):
      (3) [ ] have had a default entered against them (specify names):
   c. [ ] The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):

4. Description of case
   a. Type of case in [✓] complaint [ ] cross-complaint (describe, including causes of action):

Malpractice

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2005]

CASE MANAGEMENT STATEMENT

Cal. Rules of Court, rule 212

American LegalNet, Inc.
www.USCourtForms.com

Aug 18 06 11:43a Sadr & Barrera, APLC 619-239-0575 p.2

PLAINTIFF/PETITIONER: Damon Abnos DEFENDANT/RESPONDENT: Lee Hejmanowski, et al	CASE NUMBER: GIC 864098

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Defendants committed mal practice in their representation of client. Plaintiff would like a 3 month extension of this CMC while damages are finalized from the underlying (divorce) matter.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☑ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☑ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
November 2006 - January 2007

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☑ days *(specify number):* 7
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☑ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

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Aug 18 06 11:43a Sadr & Barrera, APLC 619-239-0575 p.3

PLAINTIFF/PETITIONER: Damon Abnos DEFENDANT/RESPONDENT: Lee Hejmanowski, et al	CASE NUMBER: GIC 864098

10. d. The party or parties are willing to participate in *(check all that apply)*:
   - (1) [ ] Mediation
   - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
   - (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
   - (4) [ ] Binding judicial arbitration
   - (5) [ ] Binding private arbitration
   - (6) [ ] Neutral case evaluation
   - (7) [ ] Other *(specify)*:

   e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

   f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

   g. [ ] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption)*:

11. Settlement conference

   [✓] The party or parties are willing to participate in an early settlement conference *(specify when)*:

12. Insurance

   a. [ ] Insurance carrier, if any, for party filing this statement *(name)*:

   b. Reservation of rights: [ ] Yes [ ] No

   c. [ ] Coverage issues will significantly affect resolution of this case *(explain)*:

13. Jurisdiction

   Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

   [ ] Bankruptcy [ ] Other *(specify)*:

   Status:

14. Related cases, consolidation, and coordination

   a. [ ] There are companion, underlying, or related cases.
      - (1) Name of case:
      - (2) Name of court:
      - (3) Case number:
      - (4) Status:

   [ ] Additional cases are described in Attachment 14a.

   b. [ ] A motion to [ ] consolidate [ ] coordinate will be filed by *(name party)*:

15. Bifurcation

   [✓] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons)*:

   Amended Complaint to add additional causes of action.

16. Other motions

   [✓] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues)*:

   Plaintiff does not agree to arbitration as to the negligence matter.

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PLAINTIFF/PETITIONER: Damon Abnos	CASE NUMBER: GIC 864098
DEFENDANT/RESPONDENT: Lee Hejmanowski, et al	

17. Discovery
   a. ☐ The party or parties have completed all discovery.
   b. ☑ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiff	Deposition of Defendants and witnesses Special and form roggs Production of documents	

   c. ☐ The following discovery issues are anticipated *(specify):*

18. Economic Litigation
   a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
   b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. Other issues
   ☑ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*
   A new attorney (Sadr & Barrera, APLC) has come in. a 3 month extension of the CMC is requested so that informal settlement may be had as well as "damages" determined by the underlying case.

20. Meet and confer
   a. ☑ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

   b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. Case management orders
   Previous case management orders in this case are *(check one):* ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any):* ________

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 8/18/06

Kasra Sadr, Esq.
(TYPE OR PRINT NAME)

▶ [signature]
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

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Aug 18 06 11:43a Sadr & Barrera, APLC 619-239-0575 p.5

EXHIBIT 4

FILED
Clerk of the Superior Court
SEP 29 2006
By: E. Jensen Deputy

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

(CENTRAL DIVISION)

DAMON ABNOS, an individual, Plaintiff, vs. LEE HEJMANOWSKI, an individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10, Defendants.	CASE NO. GIC 864098 NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION Date: November 3, 2006 Time: 1:30 p.m. Dept.: 64 Judge: Hon. William R. Nevitt, Jr. Complaint Filed: April 10, 2006 Trial Date: Not Set
SELTZER CAPLAN McMAHON VITEK, a Law Corporation, Cross-Complainant, vs. DAMON ABNOS, an individual, Cross-Defendant.	Unlimited Civil Case

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 3, 2006, at 1:30 p.m., or as soon thereafter as this matter can be heard, in Department 64 of the above-entitled court, Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK (collectively "SCMV") will and hereby do move for an order to compel arbitration of the disputes arising out of the agreement in writing of the parties made on or about November 27, 2003.

Pursuant to Code of Civil Procedure section 1281.2, SCMV moves to compel arbitration based on the fact that a dispute exists between the parties and the agreement between them provides for mandatory and binding arbitration of disputes arising out of the agreement.

The motion will be based upon this notice and motion; the accompanying memorandum of points and authorities served and filed herewith, and the Notice of Lodgment of Exhibits and Declaration of Christopher L. Ludmer, served and filed in support of SCMV's motion to compel; the pleadings, records and files in this action; and such further oral and documentary evidence and argument as may be presented at or before the hearing.

Dated: September 28, 2006

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

By: ______________________
Christopher L. Ludmer
ATTORNEYS FOR Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK

FILED
Clerk of the Superior Court
SEP 29 2006
By: E. Jensen Deputy

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
(CENTRAL DIVISION)

DAMON ABNOS, an individual, Plaintiff, vs. LEE HEJMANOWSKI, an individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10, Defendants.	CASE NO. GIC 864098 DEFENDANTS LEE HEJMANOWSKI AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT SELTZER CAPLAN McMAHON VITEK'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL ARBITRATION Date: November 3, 2006 Time: 1:30 p.m. Dept.: 64 Judge: Hon. William R. Nevitt, Jr. Complaint Filed: April 10, 2006 Trial Date: Not Set
SELTZER CAPLAN McMAHON VITEK, a Law Corporation, Cross-Complainant, vs DAMON ABNOS, an individual, Cross-Defendant.	Unlimited Civil Case

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legal fees that Abnos refuses to pay. (*See, generally*, SCMV's Answer and Cross-Complaint.)

The Agreement provides for arbitration of any dispute that may arise under the Agreement or over services rendered, and that any such arbitration shall be in San Diego, California. Specifically, the first paragraph of Exhibit A to the Agreement, entitled "Arbitration Agreement" provides:

> THE UNDERSIGNED AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS OR DISPUTES (COLLECTIVELY "DISPUTES") WHICH ARISE FROM OR RELATE TO THE ENGAGEMENT OF, OR SERVICES RENDERED OR TO BE RENDERED BY, SELTZER CAPLAN MCMAHON VITEK (INCLUDING ITS ATTORNEYS AND EMPLOYEES) (COLLECTIVELY "THE LAW FIRM") **SHALL BE DETERMINED EXCLUSIVELY BY SUBMISSION TO MANDATORY, BINDING ARBITRATION, INSTEAD OF BY A LAWSUIT OR RESORT TO COURT ACTION**. SUCH DISPUTES SHALL INCLUDE, WITHOUT LIMITATION, DISPUTES AS TO FEES, COSTS OR PROFESSIONAL MALPRACTICE (THAT IS, AS TO WHETHER ANY LEGAL SERVICES RENDERED WERE UNNECESSARY OR UNAUTHORIZED OR WERE IMPROPERLY, NEGLIGENTLY, OR INCOMPETENTLY RENDERED).

(Emphasis added) (capitalization in original.)

On August 4, 2006, SCMV sent a letter to Abnos, which he confirmed receiving, containing a written demand for arbitration, pursuant to the arbitration clause in the Agreement. (Declaration of Christopher L. Ludmer, ¶¶ 4-5.) A true and correct copy of SCMV's demand for arbitration is attached to SCMV's Notice of Lodgment as Exhibit "2" and is incorporated herein by this reference.

SCMV's August 4, 2006 demand for arbitration notified Abnos that if he did not submit to arbitration, SCMV would file a Motion to Compel. (Notice of Lodgment, Exhibit "2".) After initially agreeing in theory to arbitration, Abnos rejected SCMV's demand. (Declaration of Christopher L. Ludmer, ¶¶ 3, 5.) In his Case Management Statement, Abnos, through counsel, stated, "Plaintiff does not agree to arbitration as to the negligence matter." (Abnos' Case Management Statement, ¶ 16, attached to SCMV's Notice of Lodgment as Exhibit "3.") Accordingly, Abnos has refused to comply with the terms of the Agreement and to submit the dispute to arbitration.

III.

SCMV IS ENTITLED TO AN ORDER COMPELLING ARBITRATION OF THE PARTIES' DISPUTES UNDER THE AGREEMENT.

Based upon the foregoing facts, SCMV is entitled to an order compelling Abnos to arbitrate the parties' dispute under the Agreement. The rules relative to arbitration "reflect the strong legislative policy favoring arbitration." (*Morris v. Zuckerman* (1967) 257 Cal.App.2d 91, 95.) As a general rule, a court must order arbitration if it determines that a written agreement to arbitrate the controversy exists. (*See*, Code Civ. Proc. § 1281.2.) Thus, a court has no discretion but to order arbitration, where the petitioner is a party to an arbitration agreement and alleges the existence of a written agreement to arbitrate and the respondent's refusal to arbitrate, and where the court determines that an agreement to arbitrate a controversy exists. (*See*, *Morris v. Zuckerman*, *supra*, at 95-96.) As the Court of Appeal explained, "A heavy presumption weighs the scales in favor of arbitrability; an order directing arbitration should be granted 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.'" (*Id.* at 96 [citation omitted].)

A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. (Code Civ. Proc. § 1281.2) The Petition must be prepared in accordance with the rules applicable to motions. (Cal. Rule Ct. 303(a)(2).) Substantively, the petition must allege: (1) specific facts demonstrating the existence of an arbitrable controversy (*Graphic Arts Int'l Union v. Oakland Nat'l Engraving Co.* (1986) 185 Cal.App.3d 775, 781); (2) the arbitration clause under which the petition is made (Cal. Rule Ct. 371); and (3) that the opposing party refuses to arbitrate the controversy. (*Spear v. California State Auto. Ass'n* (1992) 2 Cal.4th 1035, 1041.)

SCMV has complied with all procedural and substantive requirements for compelling arbitration. In accordance with the express terms of the parties' written contract, the parties must arbitrate their dispute. SCMV therefore requests that this Court order Abnos to submit to compulsory and binding arbitration in San Diego, California, pursuant to the parties' Agreement.

IV.

CONCLUSION

For the foregoing reasons, SCMV respectfully requests this Court enter the accompanying order compelling Abnos to submit to binding arbitration of all disputes arising out of his 2003 Agreement with SCMV, including his claim for legal malpractice.

Dated: September 28, 2006

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

By: ______________________
Christopher L. Ludmer
ATTORNEYS FOR Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK

FILED
Clerk of the Superior Court

SEP 29 2006

By: E. Jensen Deputy

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
(CENTRAL DIVISION)

DAMON ABNOS, an individual,

Plaintiff,

vs.

LEE HEJMANOWSKI, an individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10,

Defendants.

SELTZER CAPLAN McMAHON VITEK, a Law Corporation,

Cross-Complainant,

vs.

DAMON ABNOS, an individual,

Cross-Defendant.

CASE NO. GIC 864098

DECLARATION OF CHRISTOPHER L. LUDMER IN SUPPORT OF MOTION TO COMPEL ARBITRATION BY DEFENDANTS LEE HEJMANOWSKI AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT SELTZER CAPLAN McMAHON VITEK

Date: November 3, 2006
Time: 1:30 p.m.
Dept.: 64
Judge: Hon. William R. Nevitt, Jr.
Complaint Filed: April 10, 2006
Trial Date: Not Set

Unlimited Civil Case

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I, Christopher L. Ludmer, declare as follows:

1. I am an associate attorney of Seltzer Caplan McMahon Vitek ("SCMV"), attorneys of record for Defendants Lee Hejmanowski and SCMV, and Cross-Complainant SCMV. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness in this matter.

2. I have reviewed the files concerning SCMV's prior representation of Plaintiff and Cross-Defendant Damon Abnos ("Mr. Abnos") and am familiar with the contents and maters therein. In November 2003, Mr. Abnos engaged SCMV to represent him in his divorce. (Attached as Exhibit "1" to the Notice of Lodgment filed with this declaration is a true and correct copy of the engagement letter Mr. Abnos signed that includes an Arbitration Agreement.) In about October 2004, Mr. Abnos terminated SCMV's representation and retained new counsel.

3. On July 20, 2006, I spoke on the telephone with Mr. Abnos, and informed him that the lawsuit he filed was improper because the agreement between the parties provided for mandatory arbitration of this dispute. Mr. Abnos acknowledged that the agreement did require arbitration, and stated that he agreed to arbitration in theory but preferred to address that and other issues once his underlying trial was completed sometime around July 28, 2006.

4. On August 4, 2006, on SCMV's behalf, I sent by U.S. Mail to Mr. Abnos a written demand that Mr. Abnos agree to arbitration, pursuant to the arbitration clause in the agreement between SCMV and Mr. Abnos. Attached as Exhibit "2" to the Notice of Lodgment filed with this declaration is a true and correct copy of SCMV's demand for arbitration.

5. On August 9, 2006, Mr. Abnos telephoned me at my office and acknowledged that he received the August 4, 2006 written demand for arbitration. For the first time, Mr. Abnos indicated that he might not agree to arbitration, and that his lawyers told him that the arbitration agreement he signed might not bar a jury trial.

6. On August 18, 2006, Mr. Abnos, through counsel, served SCMV with his Case Management Statement. In his Case Management Statement, Mr. Abnos stated, "Plaintiff does not agree to arbitration as to the negligence matter." (Abnos' Case Management Statement, ¶ 16.) Attached as Exhibit "3" to the Notice of Lodgment filed with this declaration is a true and correct copy of Abnos' Case Management Statement received by SCMV.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Date: September 29, 2006.

CHRISTOPHER L. LUDMER

EXHIBIT 5

NORMAN T. SELTZER
ROBERT CAPLAN
GERALD L. MCMAHON
REGINALD A. VITEK
DAVID J. DORNE
JAMES R. DAWE
BRIAN T. SELTZER
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J. KEVIN MANN'
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MICHELE HENTRICH HARDIN

OF COUNSEL
M. CHRISTINE TENNISON

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619.685.3003
619.685.3100 FAX

2100 SYMPHONY TOWERS
750 B STREET
SAN DIEGO, CALIFORNIA 92101

SELTZER | CAPLAN | McMAHON | VITEK
A LAW CORPORATION

CHRISTOPHER L. LUDMER, ESQ.
ludmer@scmv.com
619.685.3122
619.702.6895 FAX

December 15, 2006

VIA FACSIMILE AND U.S. MAIL

Joseph G. Maiorano, Esq.
The Law Offices of Joseph Guy Maiorano
Emerald Plaza
402 West Broadway, 27th Floor
San Diego, California 92101

Re: Abnos v. Hejmanowski, et al.
Our File No.: 05000.60424

Dear Mr. Maiorano:

On Monday, December 11, 2006, I left a voicemail at your office requesting an update regarding whether your client had approved your prior selection of Judge Hayden as an arbitrator. As you know, when we spoke before Thanksgiving I advised you that we had no problem with Judge Hayden as an arbitrator, but that you should be aware of Judge Hayden's relationship with Reg Vitek of this firm through the Louis M. Welsh Inn of Court, and my own participation in that Inn. We agreed that should not present a problem, but that you should inform your client on the matter. You promised to do so, and get back to me with the result. I have not heard from you since we discussed the matter, and you have not yet returned my telephone call from December 11, 2006. Accordingly, I am writing to request an update on where we stand. While the holidays will likely prevent us from moving forward immediately, I do not wish to delay the commencement of arbitration any longer than absolutely necessary.

I look forward to hearing from you so that we may quickly agree on an arbitrator, or submit the case and have one assigned.

If you have any questions, please feel free to call me at (619) 685-3122.

Very truly yours,

Christopher L. Ludmer, Esq.
SELTZER CAPLAN McMAHON VITEK

cll:slg

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619 685.3003
619 685.3100 FAX

2100 SYMPHONY TOWERS
750 B STREET
SAN DIEGO. CALIFORNIA 92101

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FAX COVER SHEET

TO:	Joseph G. Maiorano, Esq. **ATTN: ANN**		
FAX NUMBER:	(619) 230-1839	**TELEPHONE NUMBER:**	(619) 230-1612
FROM:	Christopher L. Ludmer, Esq.		
DATE:	December 15, 2006		
DOCUMENT TRANSMITTED:	Letter of today's date from Mr. Ludmer to Mr.Maiorano.		
OUR FILE NUMBER:	05000.60424	ORIGINAL: [X] WILL BE MAILED	[ ] WILL NOT BE MAILED
OUR CASE NAME:	Abnos v. Hejmanowski, et al.		
ADDITIONAL COMMENTS:			
CONFIRMATION NUMBER:	(619) 685-3122		

TOTAL NUMBER OF PAGES IN THIS TRANSMISSION: 3 (including cover sheet)

If you are not receiving properly or have not received all pages, please phone us immediately at:
(619) 685-3003. Thank you.

Fax Operator for SCMV: Sheri Garcia

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FAX COVER SHEET

TO:	Joseph G. Maiorano, Esq. **ATTN: ANN**		
FAX NUMBER:	(619) 230-1839	**TELEPHONE NUMBER**	(619) 230 1513
FROM:	Christopher L. Ludmer, Esq.		
DATE:	December 15, 2006		
DOCUMENT TRANSMITTED:	Letter of today's date from Mr. Ludmer to Mr. Maiorano.		
OUR FILE NUMBER:	05000 60424	ORIGINAL: [X] WILL BE MAILED	[ ] WILL NOT BE MAILED
OUR CASE NAME:	Abnos v. Hermanowski, et al.		
ADDITIONAL COMMENTS:			
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J KEVIN MANN[1]
TRACY A WARREN
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KEVIN D MOON

OF COUNSEL
M CHRISTINE TENNISON

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A LAW CORPORATION

CHRISTOPHER L. LUDMER, ESQ.
ludmer@scmv.com
619.685.3122
619.702.6895 FAX

January 26, 2007

VIA FACSIMILE AND U.S. MAIL

Joseph G. Maiorano, Esq.
The Law Offices of Joseph Guy Maiorano
Emerald Plaza
402 West Broadway, 27th Floor
San Diego, California 92101

Re: Abnos v. Hejmanowski, et al.
Our File No.: 05000.60424

Dear Mr. Maiorano:

As you know, I have sent you several letters and left several telephone messages over the past two months in an effort to agree on an arbitrator and move forward with this case. Despite my attempts, and the fact that it was your client who initiated this dispute, you have not responded in any way.

I ask you again for the courtesy of a response. In the event you fail to respond within a reasonable time, I plan to submit the case and have an arbitrator assigned pursuant to the AAA arbitration rules.

Very truly yours,

Christopher L. Ludmer, Esq.
SELTZER CAPLAN McMAHON VITEK
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FAX COVER SHEET

TO: Joseph G. Maiorano, Esq.
ATTN: ANN

FAX NUMBER: (619) 230-1839 **TELEPHONE NUMBER:** (619) 230-1612

FROM: Christopher L. Ludmer, Esq.

DATE: January 26, 2007

DOCUMENT TRANSMITTED: Correspondence of today's date

OUR FILE NUMBER: 05000.60424 ORIGINAL: [X] WILL BE MAILED [ ] WILL NOT BE MAILED

OUR CASE NAME: Abnos v. Hejmanowski, et al.

ADDITIONAL COMMENTS:

CONFIRMATION NUMBER: (619) 685-3122

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Fax Operator for SCMV: Melanie Butler

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FOR: SCMV

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FAX COVER SHEET

TO: Joseph G. Maiorano, Esq
ATTN: ANN

FAX NUMBER: (619) 230-1839

TELEPHONE NUMBER: (619) 230 1011

FROM: Christopher L. Ludmer, Esq

DATE: January 26, 2007

DOCUMENT TRANSMITTED: Correspondence of today's date

OUR FILE NUMBER: 0500(-6)424 ORIGINAL [X] WILL BE MAILED [ ] WILL NOT BE MAILED

OUR CASE NAME: Abrons v. Hejmanowski, et al.

ADDITIONAL COMMENTS:

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Fax Operator for SCMV: Monique Butler

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A LAW CORPORATION

CHRISTOPHER L. LUDMER, ESQ.
ludmer@scmv.com
619.685.3122
619.702.6895 FAX

NORMAN T. SELTZER
ROBERT CAPLAN
GERALD L. MCMAHON
REGINALD A. VITEK
DAVID J. DORNE
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J. KEVIN MANN[1]
TRACY A. WARREN
MICHELE HENTRICH HARDIN
WES E. HENRICKSEN
JEREMY H. DAWE
KEVIN D. MOON

OF COUNSEL
M. CHRISTINE TENNISON

[1]ADMITTED IN TEXAS ONLY

January 30, 2007

VIA U.S. MAIL

Joseph G. Maiorano, Esq.
The Law Offices of Joseph Guy Maiorano
Emerald Plaza
402 West Broadway, 27th Floor
San Diego, California 92101

Re: Abnos v. Hejmanowski, et al.
Our File No.: 05000.60424

Dear Mr. Maiorano:

Thank you for your voicemail yesterday in response to my January 26, 2007 letter regarding our attempts to select an arbitrator. While I appreciate your response, your suggestion of the Hon. Alice Sullivan seems to be moving us backward.

As background, you will recall that you originally suggested Judge Sullivan on November 8, 2006. On November 10, 2006, I declined your suggestion, and offered two others: the Hon. Herbert B. Hoffman and the Hon. James R. Milliken. I have enclosed your letter and my response for your reference. You in turn declined Judges Hoffman and Milliken. At that point we spoke by telephone several times. I told you that we would agree to the Hon. Richard Haden—whom you suggested along with Judge Sullivan on November 8, 2006—but advised you of his relationship with this firm through the Louis M. Welsh American Inn of Court. I have enclosed my December 15, 2006 letter to you in that regard as well. You informed me that Judge Haden was still agreeable to you, and that you would speak with your client to obtain his consent. It was at that point that I did not hear back from you for approximately six weeks until your voicemail on January 29, 2007. Instead of your response concerning Judge Haden that I expected, you again suggested Judge Sullivan.

If you meant to say that Judge Haden was acceptable, then we can move forward in agreement. On the other hand, if you did intend to suggest Judge Sullivan once again, then we are moving in the wrong direction. In that event, I see little point in any further back-and-forth attempting to agree on an arbitrator. We have been at that for three months now, to no avail. Delaying this matter further for conceivably interminable negotiations will not serve our clients.

I understand that you will be away from your office for the rest of this week. Accordingly, I ask that you please inform me whether you and your client agree to Judge Haden no later than Friday, February 9, 2007. In the event you inform me that Judge Haden is not acceptable, or if I do not hear from you by that date, I will submit a demand for arbitration to AAA and have a neutral arbitrator assigned in accordance with AAA rules.

I thank you in advance for your consideration and cooperation.

Yours very truly,

Christopher L. Ludmer, Esq.

CLL:mab
Encls.